

Rule 361. Discovery**Rule 361.01 Witnesses**

Any party may call witnesses to testify at any hearing. Any party intending to call a witness other than an employee of the county agency or any party to the proceeding shall, at least 7 days before the hearing, provide to the other parties and the county agency written notice of the name and address of each witness.

(Amended effective January 1, 2020.)

Rule 361.02 Exchange of Documents

Subdivision 1. Documents Required to be Provided Upon Request. If a complaint or motion has been served and filed in the expedited process, a party may request any of the documents listed below. The request must be in writing and served upon the appropriate party. The request may be served along with the pleadings. A party shall provide the following documents to the requesting party no later than 14 days from the date of service of the written request.

(a) Verification of income, costs and availability of dependent health care coverage, child care costs, and expenses.

(b) Copies of last three months of pay stubs.

(c) A copy of last two years' State and Federal income tax returns with all schedules and attachments, including Schedule Cs, W-2s and/or 1099s.

(d) Written verification of any voluntary payments made for support of a joint child.

(e) Written verification of any other court-ordered child support obligation for a nonjoint child.

(f) Written verification of any court-ordered spousal maintenance obligation.

Subd. 2. Remedies for Non-compliance. If a party does not provide the documents, the party shall be prepared to explain the reason for the failure to the child support magistrate. If the magistrate determines that the documents should have been provided, the magistrate may impose the remedies available in Rule 361.04.

Subd. 3. Financial Statement. If a complaint or motion has been served, any party may request in writing that a financial statement be completed by a party, other than a county agency, and submitted 7 days before a hearing, or if no hearing is scheduled, within 14 days after the request being served. Failure to comply is subject to remedies under Rule 361.04. Where a financial statement requests supporting documentation, it shall be attached.

Subd. 4. Treatment of Confidential Information. To retain privacy, restricted identifiers as defined in Rule 11 (such as Social Security numbers, employer identification numbers, financial account numbers) must be removed from any documents provided under this rule and may only be submitted on a separate Confidential Information Form as required in Rule 11. In addition, financial source documents as defined in Rule 11 (such as tax returns, wage stubs, credit card statements) must be submitted under a cover sheet entitled "Confidential Financial Source Documents" as required in Rule 11.

(Amended effective November 1, 2003; amended effective July 1, 2005; amended effective January 1, 2006; amended effective June 1, 2009; amended effective July 1, 2015; amended effective September 1, 2018; amended effective January 1, 2020.)

Rule 361.03 Other Discovery

Subdivision 1. Motion for Discovery. Any additional means of discovery available under the Minnesota Rules of Civil Procedure may be allowed only by order of the child support magistrate. The party seeking discovery shall serve and file a motion before the child support magistrate for an order permitting additional means of discovery. The motion shall include the reason for the request and shall notify the other parties of the opportunity to respond within 7 days. The party seeking discovery has the burden of showing that the discovery is needed for the party's case, is not for purposes of delay or harassment, and that the issues or amounts in dispute justify the requested discovery. The motion shall be decided without a hearing unless the child support magistrate determines that a hearing is necessary. The child support magistrate shall issue an order granting or denying the discovery motion. If the discovery motion is granted, the requesting party must serve the approved discovery requests upon the responding party and the discovery responses are due 14 days following service of the discovery request, unless otherwise ordered.

Subd. 2. Objections to Discovery. If a party objects to discovery that party may serve and file a motion within 7 days of service of discovery. The motion may be decided without a hearing unless the child support magistrate determines that a hearing is necessary.

(Amended effective November 1, 2003; amended effective January 1, 2020.)

Rule 361.04 Discovery Remedies

Subdivision 1. Motions to Compel. If a party fails to comply with an approved request for discovery or a request for documents under Rule 361.02, the party requesting the discovery may serve and file a motion for an order compelling an answer or compliance with the discovery request. The motion shall notify the other parties of the opportunity to respond within 7 days. The motion shall be decided without a hearing unless the child support magistrate determines that a hearing is necessary.

Subd. 2. Options Available to the Child Support Magistrate. When deciding a discovery related motion or issue, or in the event a party fails to provide documents requested under Rule 361.02, the child support magistrate may:

- (a) order the parties to exchange specified documents or information;
- (b) deny the discovery request;
- (c) affirm, modify, or quash the subpoena;
- (d) issue a protective order;
- (e) set or continue the hearing;
- (f) conduct a hearing and keep the record open to allow for further exchange of information or response to the information provided at the hearing; or
- (g) order other discovery allowable under the Minnesota Rules of Civil Procedure, if appropriate.

Subd. 3. Failure to Comply with Discovery. If a party fails to comply with an order issued pursuant to Rule 361.03, subd. 2, or Rule 361.04, the child support magistrate may:

- (a) find that the subject matter of the order for discovery or any other relevant facts shall be taken as established for the purposes of the case in accordance with the claim of the party requesting the order;

(b) prohibit the non-compliant party from supporting or opposing designated claims or defenses, or prohibiting that party from introducing designated matters in evidence; or

(c) issue any other order that is appropriate in the interests of justice, including attorney fees or other sanctions.

(Amended effective November 1, 2003; amended effective January 1, 2020.)

Rule 361.05 Filing of Discovery Requests and Responses Precluded

Copies of a party's request for discovery and any responses to those requests shall not be filed with the court unless:

- (a) ordered by the child support magistrate;
- (b) filed in support of any motion;
- (c) introduced as evidence in a hearing; or
- (d) relied upon by the magistrate when approving a stipulated or default order.

To retain privacy, restricted identifiers as defined in Rule 11 (such as Social Security numbers, employer identification numbers, financial account numbers) must be removed from any documents provided under this rule and may only be submitted on a separate Confidential Information Form as required in Rule 11. In addition, financial source documents as defined in Rule 11 (such as tax returns, wage stubs, credit card statements) must be submitted under a cover sheet entitled "Confidential Financial Source Documents" as required in Rule 11.

(Amended effective November 1, 2003; amended effective July 1, 2005; amended effective July 1, 2015; amended effective September 1, 2018.)

Rule 361.06 Subpoenas

Subdivision 1. Written Request. Requests for subpoenas for the attendance of witnesses or for the production of documents shall be in writing and shall be submitted to the court administrator. The request shall specifically identify any documents requested, include the full name and home or business address of all persons to be subpoenaed, and specify the date, time, and place for responding to the subpoena. The court administrator shall issue a subpoena in accordance with Minn. R. Civ. P. 45. The party requesting the subpoena shall fill out the subpoena before having it served. An attorney as officer of the court may also issue and sign a subpoena on behalf of the court where the action is pending.

Subd. 2. Service of Subpoenas shall be by Personal Service. All subpoenas shall be personally served by the sheriff or by any other person who is at least 18 years of age who is not a party to the action. Employees of the county agency may personally serve subpoenas. The person being served shall, at the time of service, be given the fees and mileage allowed by Minnesota Statutes 2000, section 357.22. When the subpoena is requested by the county agency, fees and mileage need not be paid. The cost of service, fees, and expenses of any witnesses who have been served subpoenas shall be paid by the party at whose request the witness appears. The person serving the subpoena shall provide proof of service by filing the original subpoena with the court, along with an affidavit of personal service.

Subd. 3. Objection to Subpoena. Any person served with a subpoena who objects to the request shall serve upon the parties and file with the court an objection to subpoena. The party objecting shall state on the objection to subpoena why the request is unreasonable or oppressive. The objection to subpoena shall be filed promptly and no later than the time specified in the subpoena for

compliance. A child support magistrate shall cancel or modify the subpoena if it is unreasonable or oppressive, taking into account the issues or amounts in controversy, the costs or other burdens of compliance when compared with the value of the testimony or evidence requested, and whether there are alternative methods of obtaining the desired testimony or evidence. Modification may include requiring the party requesting the subpoena to pay reasonable costs of producing documents, books, papers, or other tangible things.

(Amended effective January 1, 2006.)

Advisory Committee Comment - 2006 Amendment

Rule 361.06 is amended, effective January 1, 2006, to conform the subpoena provisions to the parallel procedures of Minn. R. Civ. P. 45, which is amended at the same time.